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ABSTRACT

The extent to which there is a favorable view of a child's right to education in United States courts is examined. Important United States Supreme Court cases regarding segregated school systems, unequal allocation of state financial resources for education, and civil rights of students are reviewed to reveal the extent to which a legal recognition of a child's right to education is emerging. The trend observed in this study is that the federal judiciary is tending toward the attitude that this problem is of individual state, not federal, concern. (JD)

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ABSTRACT

The Legal Recognition of the Right to Education:
A Growing Clamor or a Fading Whisper

In contemporary discussion about children's concerns, receiving an education is sometimes advocated as a basic right. However, a lack of consensus surrounds such advocacy, which represents the search for recognition of a child's specific needs for developmental assistance in the modern world. There is a great deal of controversy about the nature as well as the value of such recognition.

The debate is hydra-like, for its various dimensions are tied to further complex issues: parental domain, state prerogatives regarding education, the status of the child, the notion of need, and ideas about public schooling. These issues, and more, are components in the controversy concerning the nature and value of recognizing a child's right to education. A primary task in considering this polymorphous debate involves the examination of the extent to which a child's right to education is currently recognized in various arenas as well as investigation of the various grounds offered as justification for that recognition. This paper represents an attempt to participate in this labor and focuses on the extent to which the right to education is beginning to achieve some recognition in the U.S. courts. To what extent there is a more favorable judicial view of a child's right to education is revealed by reviewing some of the important Supreme Court cases in the area of desegregation, financial inequity, and student civil rights.

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THE LEGAL RECOGNITION OF THE RIGHT TO EDUCATION:
A GROWING CLAMOR OR A FADING WHISPER

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Concurrent Session

In contemporary discussion about children's concerns, receiving an education is sometimes advocated as a basic right.¹ However, a lack of consensus surrounds such advocacy, which represents the search for recognition of a child's specific needs for developmental assistance in the modern world. There is a great deal of controversy about the nature as well as the value of such recognition.²

The debate is hydra-like, for its various dimensions are tied to further complex issues: parental domain, state prerogatives regarding education, the status of the child, the notion of need, and ideas about public schooling.³ These issues, and more, are components in the controversy concerning the nature and value of recognizing a child's right to education. A primary task in considering this polymorphous debate involves the examination of the extent to which a child's right to education is currently recognized in various arenas as well as investigation of the various grounds offered as justification for that recognition. This paper represents an attempt to participate in this labor and focuses on the extent to which the right to education is beginning to achieve some recognition in the U.S. courts. More specifically this paper's focus concerns judicial decisions made by the Supreme Court because this court has been active in educational matters and because it remains the final judicial arbiter. To what extent a more favorable judicial view of a child's right to education is emerging will be revealed by reviewing a few of the Supreme Court decisions in the area of desegregation, financial inequity, and student civil rights.

Federal Court Jurisdiction and Education

It has often been noticed that there is no national school system in America; there is no national system adopted or prescribed by the Federal government. The power to establish and enforce a public school system has never been delegated to the federal government. However, while the Constitution of the United States does not mention education as a federal function there is no constitutional prohibition regarding the state establishment of an educational system.⁴ The American school system such as it exists today is the result of the independent action of those states whose people made provisions in their state constitutions, which require the state legislature to establish and provide for the maintenance of a system of public schools, free to all children of the state within school age.

However, once that state educational system is established, then the resulting educational policies and practices as they develop under particular state law and state court decisions must be in conformity with the federal constitution. Since WWII there has been increasing supervision of state educational practices by the federal courts,⁵ using the interpretation of the 14th amendment as a limitation on state action whether legal, judicial or executive. The fourteenth amendment's equal protection clause states that "no state shall...deny to any person within its jurisdiction the equal protection of the laws." The point is not that all should be treated alike, but that there should be equal treatment of persons similarly situated or that all persons within a class or category should be treated alike. Further there are certain classifications which a government is constitutionally forbidden to make. Such

classifications are interpreted as violations of the 14th amendment.⁶ Thus while education is not an explicit constitutional right, the courts have reviewed state educational systems in terms of the right not to be treated differently for arbitrary reasons such as race or class. In these judicial decisions there often is a glimmer of recognition regarding the child's right to education as an implicit right or a fundamental interest necessary for the enjoyment of other explicit or implicit rights.

The rationale of this paper is that an examination of significant Supreme Court cases regarding educational concerns would reveal a judicial view of the child's right to education. In the next and main part of this paper there will be a review of a few important Supreme Court cases regarding segregated school systems, unequal allocation of state financial resources for education, and civil rights of students in order to reveal the extent to which a legal recognition of a child's right to education is emerging.

Racial Discrimination and Education Cases

The main thrust of education jurisprudence since WWII has been concerned with enforcing the constitutional right of individuals to receive education on equal terms regardless of race. In the landmark case *Brown v. Board of Education of Topeka* (1954)⁷ the court interpreted the equal protection concept to assure equal rights and procedures regardless of a person's race or color.⁸ The court announced that the Plessy doctrine of "separate but equal" had no further application in the field of public education. In *Brown I* and again the following year, 1955, in *Brown II*⁹ the constitutional right enforced was the right to

be treated equally under the law and thus not to be compelled by state action to attend a segregated school.

However, in maintaining the right of the minority person to equal protection of the laws and practices in his state regarding education, Chief Justice Warren in the majority opinion, noted "today education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditure for education both demonstrate our recognition of the importance of education to our democratic society. It is the very foundation of good citizenship. In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education. Such an opportunity where the state has undertaken to provide it, is a right which must be made available to all on equal terms."¹⁰ The right emphasized in these remarks is not the right to education, but the right, which must be available to all on equal terms, to an opportunity only where the state has undertaken to provide it.

The flood of court cases which followed Brown was focused on the implementation and securing compliance "with all deliberate speed,"¹¹ of this interpretation of the Fourteenth Amendment. The right of the student in these cases, however, is the "right of a student not to be segregated on racial grounds in schools."¹²

Several states enacted a series of statutes in order to prevent integration in its public schools; an example of such a state was Louisiana. The Supreme Court, however, in *Bush vs. Orleans Parish School Board* (1960) held that the State of Louisiana had interposed itself in the field of public education. If taken seriously, the court

stated this interposition constitutes "illegal defiance of constitutional authority."¹³ What is noteworthy is that the State of Louisiana like other states who moved to prevent the implementation of Brown, continued to retain some control over the educational processes. Thus, the federal courts could review these state educational policies in terms of the U.S. Constitution's Fourteenth Amendment. Would the child have had such Federal constitutional protection, if the state had attempted to place the entire responsibility for public education on the local community or leave education to wholly private means?

What is the constitutional right to an education at stake in the contemporary cases enumerated above? These decisions involve a concept of this right, "derived from the equal protection clause, to expect that once the state has assumed responsibility for education, local school boards will operate integrated school systems within their respective districts."¹⁴ The language of the Fourteenth Amendment is a limitation on "state action" whether legal, judicial or executive and nullifies all state laws, legislation and state action of every kind (including acts of boards of education, school administrators, teachers, etc.) that deny to citizens of the U.S. equal protection of the laws. Thus while the right to equal protection within the state system of education is protected, the right is contingent on the establishment of a state system. If no state system of education were established there would be no federal protection of the right to education. Of further concern, there is an absence of consideration about the kind of educational system to which children are entitled to equal access, to equal protection.

Financial Inequity and Education Cases

In law cases at all levels of the state and federal judiciaries judges have examined the problem of equal financing for public schools.¹⁵ Such cases are involved, for the way in which resources for American public schools are raised as well as distributed is a complex social and political problem. Schools are supported in most states by the property taxes of school district residents in addition to some monies provided by the state.¹⁶ There have been charges of inequality regarding the lack of balance in tax effort and yield on the one hand and between educational needs and resources on the other.

The landmark case regarding inequitable state arrangements for the financing of public education was *Rodriguez v. San Antonio Independent School District* (1973).¹⁷ This case arose out of the claim that the Texas method of financing public education which resulted in widely varying per pupil expenditures violated the constitutional rights of students in San Antonio's poorest, lowest tax base districts to equal protection of the laws and to education itself.

The judicial theory under which the *Rodriguez* case was brought consisted of the following argument.¹⁸ Education is a fundamental right or fundamental interest like the right to vote or the right to freedom of speech. When a state's practice affects a fundamental right, such state regulation is subject to "strict judicial scrutiny" before it will be upheld. Such strict scrutiny prohibits states from making distributions among citizens on the basis of "suspect classification" in the exercise of a fundamental right or the provision of a fundamental interest. One such suspect class is that made on the basis of wealth.

For example, the courts hold that a state may not condition the right to a fair trial according to the wealth of a defendant and must therefore provide legal counsel to indigent defendants. In the case of school finance laws that result in higher school spending in districts with higher local property tax bases, and lower school spending in districts with lower tax resources, according to this theory the courts are required to take a careful look at the justifications underlying the class because the state has classified children on the basis of wealth.

It must be pointed out that such classifications are only suspect, not necessarily prohibited. If the state can show "a compelling state interest" in distinguishing among citizens on the basis of a suspect class, the classification may stand. It has been argued that the interest in local control of education is just such a compelling state interest and justifies systems of school finance that permit local districts to vary the amount per pupil they would spend on education. But the counter argument is that the state system of school finance did not really give freedom of choice to a poor district. Thus there is no compelling interest on the part of the state that would justify a suspect class such as one made on the basis of the property wealth of the district. A state system of school finance would be considered unconstitutional if it permitted the quality of a child's education to depend on the wealth of the local school district.

However, in the Supreme Court decision, *Rodriguez v. San Antonio Independent School District* (1973) the U.S. Supreme Court rejected the judicial argument delineated above.¹⁹ The court was unwilling to restrict the scope of the state's discretion by defining the educational

needs and interests of children as a right to education. It rejected the claim, Brown notwithstanding, that there is a fundamental personal right to education under the Constitution.²⁰ Writing for the majority of the U.S. Supreme Court, Justice Powell held first that students of the school district in question were not a suspect class under the equal protection clause and thus were not entitled to a strict judicial review of the Texas financing schemes. Second, the majority opinion held that the Constitution provides no explicit right to education. Nor can education be construed as an implicit fundamental right under the Constitution "essential to the effective exercise of First Amendment freedoms and to the intelligent utilization of the 'right to vote.'"²¹

Instead the majority held that the importance of education for the effective exercise of rights is arguably less than the significance of adequate food, clothing and housing, none of which are constitutionally protected rights.²² The court in rejecting the claim that there is a federal constitutional basis for the right to education, declined to invalidate the Texas scheme, leaving the matter of educational finance to the discretion of the state.

Two weeks after the Rodriguez case a state decision, Robinson v. Cahill (1973), demonstrated that discriminating school finance systems were still subject to effective challenge.²³ The New Jersey Supreme Court declared unconstitutional that state's system of raising and distributing revenues for the schools under the state constitution. The N.J. Supreme Court decision was based on state, rather than federal, constitutional grounds. The fundamental interest approach used in the federal court cases, they found judicially unmanageable. The

state's "thorough and efficient clause" was interpreted to mean a guarantee for "that equal educational opportunity which is needed in the contemporary setting to equip a child for his role as a citizen and as a competitor in the labor market."²⁴

In other states such as Washington, California (but not in others such as Ohio) the fundamental interest approach under state constitutional law is available to those who would attack discriminating school finance systems through the courts. In other words, there may be a state equal protection bar to school systems that make "the quality of a child's education a function of the wealth of his parents and neighbors." There is thus potential for state litigation through the educational clause itself as in New Jersey or through the state equal protection clause.²⁵

This New Jersey case is particularly noteworthy in terms of the focus of this paper. The Supreme Court of the United States in the summer of 1976 refused to consider further the New Jersey State Supreme Court decision and denied certiorari.²⁶ This in effect means that if an individual state wants to consider the educational needs of its children for a thorough and efficient education, the United States Supreme Court will not interfere.

The question to consider at this point: Is this sufficient protection for a child's right to education? Even in the cases where the state courts have provided opportunity for reform, their decision is not a solution to unfairness and irrationality of educational funding.

How educational resources should be allocated is left to legislatures to determine and a range of permissible alternatives is wide. Resources are not always allocated in proportion to need, and less money

goes to school systems that face more costly and challenging educational tasks. Further while financing support for education is basic in considering a right to education, there are also other considerations. In state legislative action, there is little educational theory incorporated. The developing understandings that different types of pupils require different resources for effective learning has seldom been linked to systems of resource distribution. While states distinguish between elementary and secondary pupil needs, few states have come to grips with their general aid formulations concerning the particular needs of pupils with learning problems or with special requirements such as the physically and mentally handicapped or of pupils in vocational programs.

Student Civil Rights Cases

The final section of this paper involves a brief survey of developments which have occurred in recent years in the area of student civil rights under the First and Fourteenth Amendments. Courts have been asked to review the constitutionality of school rules and practices pertaining to freedom of expression, hair styles, campus disciplines, corporal punishment, suspension, use of IQ scores, etc.²⁷ What trend can be found concerning the recognition of the right to education in these cases in which the rights of free speech and due process have been the focus.

At the state level there developed a body of decisional law based on the doctrine "in loco parentis," which states that school officials stand in the place of the parent. In the past this doctrine provided the rationale for school and student relationships and permitted school

authorities to make rules and regulations governing student conduct which often failed to meet minimum constitutional requirements. The doctrine, "in loco parentis," was viewed as constituting an exception to the doctrine of "due process," which guarantees that citizens cannot be "deprived of life, liberty, or property without due process of law" as well as to the doctrine of "equal protection of the laws."²⁸ Much of the recent judicial activity in this area has been to correct this situation.

As was discussed in an earlier portion of this paper, "classification" is the focus of equal protection claims. The court is concerned about the basis on which the classification is made. The equality required by law does not mean that all persons must be treated alike, but only those persons who are "similarly situated" and under "like circumstances." The nub of the question in the equal protection cases, therefore, is the basis for classification. Using the traditional standard of reasonableness, the classification used was acceptable if it were not arbitrary and rested upon some ground of difference having a fair and substantial relation to the objective of the legislation.²⁹ Using this traditional standard the Courts ordinarily did not question the wisdom of expediency of any "reasonable" educational practice.

However, the long established rules that a statute does not deny equal protection if it is rationally related to a legislative or governmental objective has become subject to a significant exception--the compelling interest doctrine. This doctrine has two parts. The first part requires that classifications based on "suspect" criteria be supported by a compelling state interest. The second holds that a

statutory classification is subject to the "compelling state interest test" if the result of the classification touches on a "fundamental right" regardless of the basis of the classification. Whereas formerly the party attacking the statute, educational practice, or school rule, assumed the burden of proof, now where a First Amendment or Fourteenth Amendment right is alleged to have been infringed the school authorities must carry the burden of proving that the intrusion of the state is in furtherance of a legitimate state interest.

Recent court activity reflects a concern that the rules and regulations governing student conduct fail to meet these minimal constitutional requirements. The fifth circuit court of appeals in delivering its decision in *Dixon v. Alabama State Board of Education*, (1961) reversed the previous judicial trend and granted college students procedural safeguards "whenever a governmental body acts so as to injure them."³⁰ The court questioned whether the State Board of Education was acting in the student's best interests. The general attitude that the state does not necessarily act in the student's best interests was stressed by the U.S. Supreme Court in 1967 when it decided *In re Gault*.³¹ Though a non-educational case, the court in addressing it, did formulate the principle that younger children have a right to procedural safeguards in punitive proceedings. The decision gave children a basis for asserting a basic constitutional right to due process.

In *Tinker v. Des Moines Independent School District*³² the basic constitutional right of free speech in school was asserted. As a constitutional right it was no longer "arbitrarily controllable by school authorities under in loco parentis."³³ According to the court, students were to be considered "persons" under the constitution and

their decision reflected a concern that the benefits and discipline of an educational system are administered fairly.

The Supreme Court case, *Goss v. Lopez* (1975), illustrates the judicial development of student civil rights (the specific right of students to due process in short suspensions) and further indicates some notion of the right to education.³⁴ The case involved nine high school students in Ohio who were suspended from school for ten days for misconduct and who subsequently brought a class action suit charging that the suspension violated their right of due process as guaranteed by the Fourteenth Amendment. The Ohio District Court, which first heard the case, held the students had been denied due process as guaranteed under the Fourteenth Amendment because they were "suspended without a hearing prior to suspension or within a reasonable time thereafter."³⁵ The case was appealed to the U.S. Supreme Court who affirmed the findings of the district court.

The *Goss* case illustrates the court's attempt to define the rights of students concerning due process. The due process clause of the U.S. Constitution protects the student's legitimate entitlement to public education as a property interest in a state which has established a compulsory system of education. Also the state is constrained from an arbitrary deprivation of liberty, regarding a person's good name, reputation, honor or integrity which are important in themselves and in their relationship to later opportunities for higher education and employment. "Education is perhaps the most important function of state and local governments and the total exclusion from the educational process is a serious event in the life of the suspended child. Neither

the property interest in educational benefits temporarily derived nor the liberty interest in reputation, which is also implicated, is so insubstantial that suspensions may constitutionally be imposed by any procedure the school chooses, no matter how arbitrary."³⁶ In connection with a suspension of ten days or less, the court concluded, the conditions of due process require that the student be given oral or written notice of the charges against him, and if he denies them, an explanation of the evidence, and an opportunity to present his side of the story.

At the very minimum students facing suspension and the consequent interference with a state protected property interest must be given some kind of notice and afforded some kind of hearing. The reasoning of the court is insightful concerning the extent to which education is recognized as a right. According to the court education is not a constitutionally recognized right in itself but rather in a state which has established a compulsory education system, education is a protected property interest as well as a liberty interest. And a state, which has established a public educational system, cannot arbitrarily deprive students of that right.

One can conclude that there is a trend toward increased recognition of students' rights to due process in school decisions.³⁷ However, the right of due process in the schooling context, while important, is relatively insignificant if a child has no substantive right to elementary and secondary education suitable to his physical, intellectual, and emotional needs at public expense. Further the court noted that the state of Ohio is not constitutionally obligated to establish and maintain a public system. The child's rights both to due process and to education

are thus dependent on the establishment of a state system, and the right to education of a child in a state such as Ohio is limited by the extent to which the state system recognizes the need to provide adequately for each child's education.

Conclusion

This paper's main aim has been a brief exposition of the trend to recognize the right to education in the judicial arena. Is there a clamor regarding the legal recognition of the right to education? There is a trend to consider the child as an individual, protected by civil rights, including due process and equal protection. The U.S. Supreme Court flatly denied that education is a constitutional right or a constitutionally protected interest. However, the concept of a right to education continues to find its advocates. Justice Marshall in the dissenting opinion in the Rodriguez case stated: "In my judgment the right of every American to an equal start in life so far as the provision of a state service as important as education is concerned, is far too vital to permit state discrimination on grounds as tenuous as those presented by this record. Nor can I accept the notion that it is sufficient to remit these appellees to the vagaries of the political process which contrary to the majority's suggestion has proven singularly unsuited to the task of providing a remedy for this discrimination. I, for one, am unsatisfied with the hope of an ultimate "political" solution sometime in the indefinite future while, in the meantime, countless children unjustifiably receive inferior education that may affect their hearts and minds in a way unlikely ever to be undone."³⁸

In general, one can conclude that the recognition of a child's right to education has become a fading whisper in the federal court's decisions. But one can also say, in general, that there is a growing trend to recognize the child's right to education on the state level. In denying certiorari in the New Jersey case, the Supreme Court of the United States in effect accepted the court's decision.³⁹ Thus if the state accepts the responsibility of equitable quality schooling for all its youth, the child's right to education can be said to be recognized and thus protected at least within the borders of that state. But is this sufficient? Supposing a state refused the responsibility of educating its youth all together. And what kind and quality of education is being provided to all? What would it mean for the state to meet the needs of a child for certain developmental experiences? Obviously the extent and limit of the rights of a child to education have not been limned.

Where do we go from here? Where should we go from here? Are we moving to the point when we will be ready to recognize certain human rights which all children have and certain corresponding obligations on the part of society to implement these rights such as the right to education? Should every child have a right to elementary and secondary education suitable to his physical, intellectual and emotional needs at public expense? Should we legally recognize the right of every child to maximum education and assistance in developing his capacity to take advantage of an educational system that is individual and child centered? Should constitutional theory be expanded to include at least some

quality of life claims, such as the right to education? This paper has been an attempt to contribute to this important discussion by examining to what extent courts have become somewhat more willing to ask whether children should have such rights and if so, how they might be secured.

Footnotes

1. Such as in: United Nations International Bill of Rights or in Thomas J. Cottle, Barred from School, 3 million children. New York: New Republic Book Co. (1976). Or more specifically in "Crack in Liberty Bell: compulsory education" by Helen Baker, Civil Liberties, No. 286, April 1972. "The right of free speech is enjoyed by wise men and fools; we do not choose who shall enjoy the fruits of the liberties we fight for. If the right to an education is basic, then the individual has a right to attend a school that meets his or her educational needs and the risks of that right must be chanced."
2. Education has long been the subject of controversy and struggle. This is reflected in court cases since the establishment of public schools in the 19th century.
3. See discussion in Harvard Educational Review, Vol. 43, #4, November, 1973 and Vol. 44, #1, January, 1974. Both these journal issues were devoted to the complexities involved in talk about children's rights in general.
4. 10th Amendment to the U.S. Constitution. "The powers not delegated to the U.S. by the Constitution nor prohibited by it to the States, are reserved to the States, respectively or to the people."
5. The equal protection clause is used to review state practices regarding voting and criminal procedures etc., as well as state educational policies and practices.
6. Originally the U.S. Supreme Court's interpretation of the Fourteenth Amendment provided that the constitutional duty of a state was satisfied if the state provided separate schooling for whites and for other races. (Plessy v. Ferguson 163 U.S. 537 (1896), and Cumming v. County Board of Education 175 U.S. 528 (1899)).
7. Brown v. Board of Education, 347, U.S. 483 (1954).
8. There are three tests to determine whether or not there is equality in education with respect to race. One test is the reasonableness of classification. A second is the quality of the facilities being afforded to the different groups. A third is the effects of the differences in treatment. Each of these tests may be applied to current inequalities in education. Arthur E. Wise, Rich Schools, Poor Schools, The Promise of Equal Educational Opportunity, Chicago, University of Chicago Press (1972), p. 46.
9. Brown v. Board of Education, 349 U.S. 294 (1955).
10. Ibid., at 492. (Chief Justice Earl Warren delivered this opinion).
11. Some key cases regarding racial equality in education.
Brown v. Board of Education, 347 U.S. 483 (1954).
Bolling v. Sharpe 347 U.S. 497 (1954).
Brown v. Board of Education, 349 U.S. 294 (1955).
Cooper v. Aaron, 358 U.S. 1 (1958).
Bush v. Orleans Parish School Board, 364 U.S. 500 (1960).
Baker v. Carr, 369 U.S. 186 (1962).
Bell v. School City of Gary, 377 U.S. 924 (1964).

Harper v. Virginia Board of Elections 383 U.S. 218 (1964).
 Griffin v. Prince Edward School Board, 377 U.S. 218 (1964).
 Green v. County School Board, 301 U.S. 430 (1968).
 Alexander v. Holmes County Board of Education 396 U.S. 19 (1969).
 Northcross v. Memphis School Board, 377 U.S. 232 (1970).
 Cisneros v. Corpus Christi Independent School District, 413 U.S. 920 (1970)
 cert. denied.
 Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).
 Wright v. Council of Emporia, 407 U.S. 451 (1972).
 U.S. v. Scotland Neck Board of Education, 407 U.S. 484 (1972).
 Keyes v. School District #1, 413 U.S. 921 (1973).
 Aaron v. Cooper 257 F2d 33 (1938). The Supreme Court on certiorari affirmed
 the judges of the federal court of appeals: Aaron v. Cooper 163 F Supp 13
 (1958).

12. Bolling v. Sharpe (1954) at 19.
13. Bush v. Orleans Parish School Board 364 U.S. 500 (1960) at 500-01.
14. Powell 41 Law Week 5012.
15. List of key cases concerning financial equality in education.
 Serrano v. Priest, 483 P. 2d 1241, 1244 (Cal. 1971).
 San Antonio Independent School Dist. v. Rodriguez 411 U.S. 1, 58 (1973).
 Robinson v. Cahill, 62 U.S. 473, 303 A. 2d 273 (1973).
16. The four principle sources for public school funds are the federal individual income tax, state income taxes, state sales tax, and property taxes. Since the percentage of revenue collected at the local level averages 52 percent for the nation as a whole, the chief burden is placed on the property tax. John Martin Rich Challenge and Response: Education in American Culture, New York: John Wiley & Sons, 1974, p. 218.
17. Rodriguez v. San Antonio Independent School District 411 U.S. 1, 58 (1973).
18. Persons such as Arthur E. Wise and John E. Coons and his associates, S. Sugarman and W.H. Clune III saw constitutional law as a vehicle for eradicating the problem of school financial inequality.
19. Rodriguez v. San Antonio Independent School District (1973).
20. A three judge federal district court had accepted the argument delineated above. Rodriguez v. San Antonio Independent School District, 337 F. Supp. 280 (1971).
21. Rodriguez v. San Antonio Independent School District (1973) at 1298.
22. Ibid., at 1299.
23. Robinson v. Cahill, 62 NJ 473, 303 A. 2d 272, (1973).
24. Robinson v. Cahill 1973 at 477.

25. It is interesting to note at this point that state courts in California and Michigan basing their decision on state constitutional grounds have said that education is a fundamental interest. In *Serrano v. Priest* (1972) the California State Supreme Court stated: "we are convinced that the distinctive and priceless functions of education in our society warrants indeed compels our treating it as a fundamental interest." 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P. 2d 1241. Courts in other states have refused, however, to adopt the fundamental interest argument and do not hold that education is entitled to extra-ordinary protection.
26. Cert. denied *Dickey v. Robinson* 414 U.S. (1976). (*Robinson v. Cahill* 62 NJ 473 (1973)).
27. Some key cases regarding civil rights of students.
Shelton v. Tucker, 364 U.S. 479, 487 (1960).
Engle v. Vitale, 370 U.S. 420 (1962).
Abington School District v. Schemping, *Murray v. Curlett* 374 U.S. 203, 205 (1963).
Hobson v. Hansen, 269 F. Supp. 401 (1967).
Ferrell v. Dallas, 393 U.S. 856 (1968).
Kerr v. Schmidt, 401 U.S. 1201 (1971).
Reed v. Reed, 404 U.S. 71 (1971).
Wisconsin v. Yoder, 406 U.S. 205 (1972).
Healy v. James, 408 U.S. 169, 198 (1972).
Grayard v. City of Rockford 408 U.S. 104 (1972).
Papish v. Bd. of Education of Univ. of Missouri 401 U.S. 667 (1973).
Miller v. Cal., 413 U.S. 13 (1973).
Goss v. Lopez 95 S. Ct. 729 (1975).
Wood v. Strickland 95 S. Ct. 992 (1975).
28. Rights of the Fourteenth Amendment.
29. Arval Morris, *The Constitution and American Education*, pp. 82-89. See also Kirp, David L. and Mark G. Yudof, *Educational Policy and the Law*, Berkeley, Cal., McCutcheon Pub. Co., 1974, and Kurland, Philip B., "The Supreme Court, 1963 Term Foreword: 'Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government,'" *Harvard Law Review* LXXVIII (Nov. 1964), 193-76; Tussman, Joseph and Broek, Jacobus, "The Equal Protection of the Laws," *Cal. Law Review* XXXVII (Sept. 1949) 342-81.
30. *Dixon v. Alabama State Board of Education* 294 F. 2d 150 (C.A. 5th Cir) 1961.
31. *In re Gault* 387 U.S. 1 (1967). "Juvenile court history has again demonstrated that unbridled discretion, however, benevolently motivated, is frequently a poor substitute for principle and procedure." "Under our constitution, the condition of being a boy does not justify a kangaroo court." *In re Gault* (1967) at 18.
32. *Tinker v. Des Moines Independent School District* 393 U.S. 503 (1969).
33. *Ibid.*, at 506.
34. *Goss v. Lopez* 95 S. Ct. 729 (1975).

35. Ibid., at 571.
36. Ibid., at 574-576.
37. One might argue that the Supreme Court decision in *Ingraham et al. v. Wright et al.*, 75-6527, U.S. Sup. Ct., April 19, 1977, symbolizes a reversal of this trend. This case involved a review of the constitutionality of corporal punishment.
38. *Rodriguez v. San Antonio Independent School District* (1973) at 239.
39. Cert. denied *Dickey v. Robinson* 414 U.S. (1976).